

Appl. No. 10/789,255
Amdt. dated July 28, 2005
Reply to Office Action of Feb. 8, 2005

REMARKS/ARGUMENTS

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Claim 20 has been amended substantially incorporating elements found in 46 – 48. Support is also found in Fig. 38, 38A, 41 and 42.

Claims 1-10, 12-19, 20-25, 28, 33, 39, 41, 43 and 45-48 were rejected under 35 USC 103(a) as being unpatentable over Baillie et al. (U.S. Patent 5,361,725) in view of Schwede (U.S. Patent 6, 209,490) and further in view of Donchey (U.S. Patent 5,890,455). Applicant traverses this rejection.

A salient objective of the present invention is to provide an automatic grooming box apparatus capable of accommodating different size animals. Moreover, adjustability accustoms an animal to enter the enclosure. The aperture is adjustable so that an animal can be trained by first presenting a relatively large non-threatening aperture which the animal passes through many times each day on its way to and from the food source. As the animal becomes accustomed to this aperture and the grooming action of the brushes, the aperture can be progressively narrowed to increase the grooming action. See, Column 7, lines 43-52.

Appl. No. 10/789,255
Amdt. dated July 28, 2005
Reply to Office Action of Feb. 8, 2005

Neither Baillie nor Schwede nor Donchey disclose a portal with an adjustable aperture defined by a plurality of frames. Neither do these references disclose a grooming brush means on a plurality of the frames forming the aperture. A prima facie case of obviousness has not been established.

Claim 22 as now amended specifies that the accordion wall panel is an internal panel within the apparatus. Support for the amendment is found in Fig. 2 which illustrates internal accordion panels at 26, 38, 40 and 42.

Donchey was cited for disclosing an accordion panel in Figure 11. The reference does disclose expanding and retracting accordion panels 88. These panels are external to the pet/plant enclosure. They form no part of the structure internal to the enclosure. Panel 88 is similar to those utilized in window air-conditioners functioning as a shielding to prevent intrusion of unwanted pests entering a house through a window opening. By contrast, the accordion panels in the present invention operate as flexible walls within Applicant's inventive housing. There is a totally different functioning of this accordion wall relative to that disclosed by the reference.

Claim 23 specifies that the accordion wall panel (as well as the solid and mesh wall panels) are each removable from the enclosure. Donchey was cited for the replaceability of screen panel inserts and transparent panel inserts. However, there is no disclosure that an accordion panel is removable from within the enclosure.

Appl. No. 10/789,255
Amdt. dated July 28, 2005
Reply to Office Action of Feb. 8, 2005

Claim 28 specifies that a grooming brush and an elastic support are the grooming brush. The Examiner acknowledged that Baillie does not teach attachment of a grooming brush to an elastic support. Rejection is based upon some hindsight rationalization that it would be obvious to the schooled person to use an elastic support because a rigid one would tend to cause brushes to be ripped off when an animal passes through the opening. Probably sensing that this might be an inadequate rejection, the Examiner argues the feature is one of a mere design choice.

The Applicant has found functional utility rather than design usefulness for the elastic support. An elastic support strip facilitates use of a relatively stiff bristle on the brush. This enables the brush to conform to the animal's body and to effectively perform a grooming action without causing extreme discomfort. None of the cited prior art discloses this feature. The Examiner has not presented a prima facie case of obviousness.

Claims 26 – 27 were rejected under 35 USC 103(a) as being unpatentable over Baillie et al. in view of Schwede, in view of Donchey and further in view of Northrup, et al (U.S. Patent 5,964,189). Applicant traverses this rejection.

Northrup et al. does not remedy the basic deficiencies of the primary reference. There is no disclosure of an aperture formed by a plurality of inwardly movable frames, and the presence of a grooming brush or at least a plurality of the frames.

Appl. No. 10/789,255
Amdt. dated July 28, 2005
Reply to Office Action of Feb. 8, 2005

Claims 29 - 32 and 49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Baillie et al. in view of Schwede, in view of Donchey and further in view of Leppanen (U.S. Patent 6,257,172). Applicant traverses this rejection.

Applicant's Claim 29 recites a grooming brush comprising a plurality of hollow bristles. Leppanen was said to disclose a wide variety of grooming brushes. These brushes, through a hollow handle and ports 44, deliver medicinal or pesticidal powder in a grooming treatment. Unlike the presently claimed invention, bristles 36 of Leppanen are not hollow, it is only the base from which they project which is hollow and has ports. Compare with Applicant's Fig. 24.

Claim 30 of the present invention recites hollow bristles further comprising a plurality of barbs. See Fig. 24, element 84, 86. This structural arrangement is not found in the reference. Claim 30 has been amended to leave no doubt of the arrangement found in Fig. 24. The plurality of barbs are cited as being arranged on the bristles.

Claim 32 is likewise patentably distinct from Leppanen even in combination with the other references. The curved bristles are not shown in Leppanen or any of the cited art.

Claim 49 as now amended recites a pair of solid plates each with an aperture of size sufficient for a pet cat to pass therethrough, the solid plates being respectively mounted, one in front and one in the rear of the portal aperture having the plurality of grooming brush means.

Appl. No. 10/789,255
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Leppanen was cited as teaching a slotted flexible brush plate 46 having a front and rear and a pair of solid plates 28, 30, each having an aperture 44. Applicant notes that the grooming brush of Leppanen is a hand held device. Moreover, this brush requires a human hand operation to agitate and rotate the brush over an animal's hair or fur. Agitation and rotation allows for the medicinal or pesticidal powder to become dispensed through the various apertures and partitioning walls. See Column 1 (lines 52-60) and Column 2 (lines 5-10). This mechanism contrasts starkly with the relatively stationary brush arrangement in Baillie et al. or the present invention. Anyone skilled in the art would not apply an agitation/rotation system as described by Leppanen into the stationary motionless system of the primary reference.

Furthermore, the Examiner has stretched interpretation of the aperture 44 found in Leppanen to achieve a dubious analogy with the primary reference. Claim 49 recites an aperture sufficient to allow passage of a pet therethrough. Leppanen neither describes nor intends to have apertures of sufficient size to allow any animal transfer through aperture 44. Leppanen describes a hand-held brush. Any apertures must be sufficiently large to allow a powder transfer but sufficiently small to control dispensing of relatively in small amounts.

Claims 34 – 36 and 50 were rejected under 35 USC 103(a) as being unpatentable over Baillie et al. in view of Schwede, in view of Donchey and further in view of Landon (U.S. Patent 5,247,901). Applicant traverses this rejection.

Claim 37 recites an air-conditioning means which comprises a pair of spaced apart conductive plates and electrostatic generator means connected to the conductive plates. Neither Landon et al. nor any of the other references disclose spaced apart conductive plates and electrostatic generator means connected to those conductive plates. The Examiner states that these features are common elements in HVAC systems, and, that one of ordinary skill would find it obvious that these devices would be present in the air conditioning systems. Applicant responds that the Examiner has presented no basis for indicating that electrostatic systems are common in HVAC systems. Even if electrostatic devices are common to HVAC systems, this still would not indicate appropriateness for a relatively small apparatus such as the pet grooming enclosure of the present invention or that in Baillie et al. Does the Examiner's home have an electrostatic system that accompanies his HVAC? The undersigned attorney certainly does not have one.

Claim 38 recites a sensor means and control means disposed in the enclosure. These means sense the position of an animal in the enclosure (it also happens to operate the air-conditioning means). Landon et al. was cited for disclosing a sensor and control means. Attention was drawn to Column 15, (lines 26-54). Applicant notes that a close reading of those passages would find no reference to a mechanism that would sense the

Appl. No. 10/789,255
Amdt. dated July 28, 2005
Reply to Office Action of Feb. 8, 2005

position of an animal in the enclosure. A prima facie case of obviousness has not been presented with respect to all elements of Claim 38.

Claim 50 recites a plurality of electrical outlets disposed in the enclosure for powering equipment connected to these electrical outlets. Applicant's enclosure is an area in which the animal is free to navigate. The Examiner has cited Landon et al. for similar disclosure in Column 12 (lines 12-31). A close review of the cited portion reveals just the opposite of the Examiner's interpretation. Landon et al. states: "For safety reasons, it is preferred that an active electric energy source for the shuttle door motor 154 not be present within the suites." See Column 12 (lines 10-15). The reference further states: "as noted above use of a portable battery pack avoids the need for live electrical wiring in the chamber confines and further avoids the presence of actuating switches which may be in reach of the animals." See Column 12 (lines 27-31). To Applicant it is crystal clear that Landon et al. teaches away from the recitation found in Claim 50.

Claim 44 was rejected under 35 USC 103(a) as unpatentable over Baillie et al. in view of Schwede, in view of Donchey, and further in view of Marischen et al. (U.S. Patent 5,351,653). Applicant traverses this rejection.

Claim 44 recites a sonic generator means for generating sonic energy to dissuade an animal from entering selected areas of the enclosure.

Appl. No. 10/789,255
Amdt. dated July 28, 2005
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Marischen et al. was cited for teaching a training method incorporating a sonic generator for producing sonic energy in order to dissuade an animal from doing a particular action. From this, the Examiner considered it would be obvious to modify the enclosure disclosed by Baillie et al. to incorporate a sonic generator.

Applicant views Marischen et al. in a quite different light. This reference discloses a dual system. A hand-held electronic training device is disclosed providing both the positive and negative audio tones to aid in the training of domestic animals. Claim 44 is distinct from the reference in at least two aspects. The claimed sonic generator of the present invention is mounted on the enclosure of the apparatus. This is distinguished from a hand held device. Secondly, the sonic energy to be generated in the present invention is used to prevent an animal from entering select areas of the enclosure. This "noise" is not a training concept. It merely temporarily dissuades an animal from a particular course of travel. Marischen trains between positive and negative on an absolute basis. Applicant utilizes the sonic generator as a temporary barrier. For instance, the sonic energy barrier is up when a particular area of the enclosure may be undergoing litterbox cleanup, replacement of food or perhaps even repair. At some later time the sonic energy can be discontinued to allow re-entry of the animal to the previously restricted area. Thus, unlike the audio tones of Marischen et al. which provide

Appl. No. 10/789,255
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for absolute "positive" and "negative" response, Claim 44 is a "dissuasion" that can be temporarily active or inactive. Thus, the combination of these references would not render Claim 50 obvious.

Applicant notes that the Examiner has not rejected Claims 40 and 42.

A credit card authorization form in the amount of \$510.00 to cover the three month extension fee is enclosed.

In view of the foregoing amendment and comments, Applicant requests the Examiner to reconsider the rejection and now allow the claims.

Dated: July 28, 2005

Respectfully submitted,

MALINA & ASSOCIATES, P.C.

By:

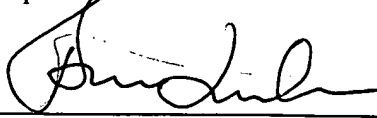


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7/28/05
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